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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Establishment of a Class A
Television Service

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MM Docket No. 00-10 ✓
MM Docket No. 99-292
RM-9260

REPLY COMMENTS OF MOJAVE BROADCASTING COMPANY

Mojave Broadcasting Company, permittee of new UHF television station KMCC, Channel 34, Lake Havasu City, Arizona, and proponent of a petition for rulemaking to change the station's community of license to Laughlin, Nevada, hereby submits its reply comments in response to the *Order and Notice of Proposed Rulemaking* ("NPRM") released January 13, 2000 in the above-captioned proceeding to establish a Class A low power television ("LPTV") service pursuant to the Community Broadcasters Protection Act of 1999 ("CBPA" or the "Act").¹

As demonstrated in the comments filed by the Association of Maximum Service Television, Inc. and the National Association of Broadcasters ("MST/NAB"), the Association of Local Television Stations, Inc. ("ALTV"), and other parties representing the nation's full-service television broadcasters, the improper implementation of the CBPA, through "[a] well-meaning liberality with respect to Class A stations at the outset, whose longer-term ill-effects may not

¹ The CBPA is now codified at 47 U.S.C. § 336(f).

have been considered with sufficient care,” could have a dramatic and seriously adverse impact on television service to the public in the future. *See* MST/NAB Comments at iii. For the reasons set forth in those comments and discussed further below, Mojave strongly urges the Commission to proceed cautiously in adopting regulations for the new service, to ensure that the licensees and permittees of full power stations retain the flexibility needed to maintain and improve NTSC service and to implement digital television (“DTV”) service in accordance with the Commission’s requirements.

As the Commission’s records will reflect, the construction permit for KMCC, a new television station authorized to operate on Channel 34 and serve Lake Havasu City, Arizona, was issued on May 1, 1996. Two months later, on July 9, 1996, Mojave’s predecessor-in-interest filed a Petition for Rulemaking requesting a change in the city of license of KMCC from Lake Havasu City to Laughlin, Nevada, and a change in the site of KMCC’s currently authorized facilities. The Petition demonstrated that the proposed reallocation is necessary to ensure the long-term viability of the new station and that it would make possible significant service improvements by KMCC, as well as facilitating the costly transition to DTV service by the new station.

Consideration of the proposed reallocation was delayed for nearly three years during the pendency of the Commission’s proceedings to establish procedures for the transition to DTV service and promulgate a Table of Allotments for the paired digital channels to be used by full service broadcasters. Not until April 9, 1999, did the Commission release a *Notice of Proposed Rulemaking* (DA 99-630) with respect to Mojave’s reallocation proposal. The comment period specified in the *Notice of Proposal Rulemaking* was completed on June 15, 1999; the requested reallocation of the station to Laughlin is unopposed and has been strongly supported by local

officials and residents. It now appears that issuance of a Report and Order granting Mojave's Petition for Rulemaking and changing KMCC's city of license to Laughlin, Nevada, is being delayed solely by the pendency of these proceedings to implement the CBPA. Mojave respectfully submits, however, that the CBPA fully recognizes the importance of efforts, such as those undertaken by Mojave, to maintain and improve NTSC service and to bring about a rapid transition to DTV service, and that the Act can and should be implemented in a careful and restrained manner that will afford full power television broadcasters maximum flexibility to do so.

Specifically, the focus of the CBPA was on the protection of a "*small number*" of existing low power television stations that satisfied certain programming and operational requirements during the period immediately preceding the CBPA's enactment (on November 29, 1999). *See* MST/NAB Comments at 15-17; ALTS Comments at 3-5,8; Comments of Sinclair Broadcast Group, Inc. ("Sinclair") at 1,7-10. In the CBPA, Congress indicated its intention to protect only *low power television stations* that were broadcasting at that time a minimum of 18 hours per day *and* carrying an average of three hours per week of programming produced within the local market area served by the LPTV station.

Although the CBPA gave the Commission discretion to consider other public interest factors, the thrust of the statute clearly was the protection of this limited group of locally oriented services, and there is no indication whatsoever in the Act that Congress intended that the FCC confer protected status on passive translators repeating out-of-market signals,² or on LPTV

² Indeed, the CBPA refers specifically to low power television stations as potentially eligible for Class A status, and not to television translators. The distinctions between the two have long been established and are clearly recognized, and Congress certainly would have made clear any

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stations that do not contribute uniquely to the diversity of voices on a local level.³ Thus, Mojave submits, the Commission should interpret the eligibility criteria for Class A LPTV status strictly, and establish a very high threshold in the event any discretionary “public interest” category is considered. (At a minimum, the Commission should defer consideration of any Class A LPTV applications not meeting the local origination specifications of the CBPA until after the DTV transition period.) To do otherwise would stray far beyond the intent of Congress and could severely limit the flexibility needed by full power stations to maintain and improve their facilities in order to continue to serve their local communities.

Further, Mojave urges the Commission to reject any calls for additional opportunities for low power stations to seek Class A LPTV status in the future. Again, the CBPA was enacted to protect the limited number of existing LPTV stations that met the local service requirements specified in the Act and that might otherwise be displaced or terminated due to changes in NTSC allocations or the transition to DTV. An open-ended eligibility process is not required by the statute, and is in fact inconsistent with the timetable for applications specified in the CBPA. Moreover, acceptance of Class A applications after the one-time window contemplated by the statute would bring an unnecessary element of uncertainty to the overall television allotment

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intention to include facilities other than those authorized and operating as LPTV stations. Even in the provision of the CBPA relating to the possible issuance of DTV licenses, Congress referred separately to “television translator stations” as distinct from “qualifying low-power television stations.” *See* 47 U.S.C. § 336(f)(4).

³ In this regard, Mojave submits that the FCC should employ a narrow definition of the “market area” served by a LPTV station claiming eligibility for Class A status, as intended by Congress, and reject suggestions that programming originated outside the community of license or actual service area of the LPTV station be considered.

environment, and could severely handicap existing full service licensees and permittees who need to be afforded as much flexibility as possible in order to maximize service and make an orderly transition to the digital era. *See* MST/NAB Comments at 15-17; ALTS Comments at 8; Sinclair Comments at 10-12.

Mojave supports the Commission's stated intention to continue to use the allotment and interference criteria currently in effect with respect to low power television stations to determine protection for Class A LPTVs from full power NTSC and DTV facilities. *See NPRM* at ¶¶ 10, 14-15, 29. Use of these standards will fully satisfy the Congressional directive to "preserve the service areas" of any LPTVs that demonstrate eligibility for Class A status. Indeed, as the Commission notes in its *NPRM*, the use of these long-established standards is consistent with the proposal in its September 22, 1999 *Notice of Proposed Rulemaking* in the now superseded MM Docket No. 99-292. Further, the maintenance of established technical standards "would preserve existing service provided by LPTV stations and minimize disruption or preclusion for other services." *NPRM* at ¶ 10. There is no suggestion in the statute that Congress intended that the Commission should alter these standards, nor that any additional protection should be extended to Class A licensees beyond that now in effect.

The Commission suggests in the *NPRM* that it may preserve the service area of LPTV licensees from the date the Commission receives an acceptable certification of eligibility for Class A status. Mojave submits that any application or petition for rulemaking relating to the facilities of a full power television station on file prior to that time should be given precedence over requests for Class A status, as they would with respect to later-filed full power NTSC or

DTV applications.⁴ Certainly, absent a clear directive from Congress which is not present here, the FCC should not retroactively deprive full power applicants or petitioners of the “cutoff” protection to which they are entitled under the Commission’s long-established application and channel allotment procedures.

Further, in the event the Commission should decide to establish eligibility criteria that go beyond those specifically set forth in the CBPA, any protection to be afforded the newly-eligible Class A licensees should begin only after that determination is made, and not retroactively on January 28, 2000, or any other date. In addition, the Commission should ensure that the grant of Class A status to LPTV licensees does not unnecessarily frustrate or preclude the efforts that full power permittees and licensees must make to continue and enhance existing NTSC service and make the required transition to DTV.

In sum, Mojave urges the Commission to resist unjustified entreaties to extend eligibility for protected Class A LPTV status beyond the narrow category of LPTV licensees that were the focus of Congress’ concern in the CBPA. Further, the Commission should maintain, but not increase, the allotment and interference standards now in effect with respect to low power television stations in order to preserve existing LPTV service areas without unnecessary disruption to or preclusion of full power and other services. Finally, the Commission should take appropriate steps to ensure that full power television stations retain the flexibility they need to

⁴ Mojave’s petition for rulemaking to reallocate KMCC’s channels to Laughlin, for example, is the functional equivalent of a major change application, and was a matter of public record in 1996. Further, the NPRM in the reallocation proceeding was released on April 9, 1999, over seven months before the enactment of the CBPA. Thus, Mojave’s proposal is entitled to priority over later-filed applications, whether they be for full power television or Class A LPTV stations.

maintain and improve existing NTSC service and, over the coming years, make a successful transition to digital operations on their assigned DTV or original analog channels.

Respectfully submitted,

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